

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-195075

↓ addressee

DATE: February 13, 1980

MATTER OF: United States Merchant Marine Academy
Employees - Uniform Allowances

DLG00696

- DIGEST:
1. In 1968 certain employees of the Merchant Marine Academy were granted a uniform allowance of \$26.60 per year, and in 1978 that allowance was increased by \$41.60 to \$68.20 per year under a new administrative directive designed to upgrade the quality and quantity of their uniform articles. The \$41.60 increase in the allowance that the employees received in 1978 may not be applied retroactively to increase their allowances for the years between 1968 and 1978, since it is a well established rule that administrative directives may not be given retroactive application.
 2. An annual uniform allowance of \$26.60 was granted to Merchant Marine Academy employees in 1968 to enable them to replace certain, specified uniform articles every year. Although Maritime Administration authorities did not review the allowance annually thereafter, there is no indication that the allowance was insufficient for its intended purpose in subsequent years, and there is no basis for a retroactive readjustment of the allowance rate.

This action involves a request for an advance decision from Mr. Phillip M. Hudson, Jr., Authorized Certifying Officer, Maritime Administration, Department of Commerce, concerning the propriety of making payment on claims for

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B-195075

additional uniform allowances] for the years from 1969 to 1978 which have been submitted to him by 44 craft and custodial employees of the United States Merchant Marine Academy.

The 44 employees in question are required to wear spruce green industrial uniforms at work. In 1968 a supplemental uniform replacement allowance of \$26.60 per year was established for them, and the amount of that annual uniform replacement allowance remained unchanged until 1978, when it was increased by \$41.60 to \$68.20 per year.

In claims dated May 25, 1979, the 44 employees contended that Maritime Administration authorities had a duty under applicable regulations to review the amount of the uniform replacement allowance annually after 1968 and to increase the allowance each year on the basis of yearly increases in uniform clothing costs. They further contended that Maritime Administration authorities failed to perform that duty, and for that reason the amount of their annual uniform replacement allowance remained improperly "frozen" at the rate of \$26.60 between 1969 and 1978. They suggested that they should therefore be paid additional uniform allowances for the years from 1969 to 1978 to compensate them for the loss of annual increases in the allowance which they believed should have been made every year during that period. Each of the 44 employees submitted this statement and computation:

"* * * I am submitting the following claim of:

<u>"Year</u>	<u>10 Year Increase</u>	<u>Allowance Should Have Been</u>	<u>Money Claimed Per Year</u>
1969	\$4.20	\$30.80	\$ 4.20
1970	4.20	35.00	8.40
1971	4.20	39.20	12.60
1972	4.20	43.40	16.80
1973	4.20	47.60	21.00
1974	4.20	51.80	25.20

B-195075

1975	4.20	56.00	29.40
1976	4.20	60.20	33.60
1977	4.20	64.40	37.80
1978	4.20	68.80	42.00
Total for ten years			<u>\$231.40"</u>

The Authorized Certifying Officer notes that this computation appears to be based on the \$41.60 increase in the annual uniform replacement allowance that the 44 employees received in 1978. The employees apparently rounded the \$41.60 increase to \$42 and divided that amount by 10 in arriving at their conclusion that the allowance should have been increased by \$4.20 in each of the 10 years after 1968. However, the Certifying Officer states that he has no way to determine whether the allowance would actually have been increased by \$4.20 per year if the annual review of uniform costs required by regulation had been conducted, and he questions whether the failure of the concerned Maritime Administration authorities to conduct annual cost reviews between 1968 and 1978 could constitute a proper basis for payment of the retroactive allowances claimed.

Provisions of statutory law governing the entitlement of Federal employees to uniforms and uniform allowances are contained in chapter 59 of title 5, United States Code (5 U.S.C. §§ 5901-5903). Those provisions of law authorize an amount not to exceed \$125 to be appropriated annually for each employee who is required by law or regulation to wear a prescribed uniform in the performance of his official duties, and the head of the agency concerned is required to (1) furnish to each such employee uniforms at a cost not to exceed \$125 a year, or (2) pay to each such employee an allowance for uniforms not to exceed \$125 a year. 5 U.S.C. § 5901. Uniforms or uniform allowances are to be furnished in accordance with regulations prescribed by the Director of the Bureau of the Budget. 5 U.S.C. § 5903.

Implementing statutory regulations are contained in Bureau of the Budget Circular A-30 (Revised), dated

B-195075

August 20, 1966. Section 4b of that regulation provides that whenever the head of an agency determines that a group of employees is required to wear a uniform, he shall determine whether the best interests of the Government will be served by furnishing Government-owned uniforms to employees, or by paying uniform allowances for uniforms procured by employees or by a combination of both methods. Section 6a provides that when the head of an agency elects to pay allowances instead of furnishing uniforms, the agency shall develop lists of required uniform items and their estimated costs for each group of employees subject to the same uniform requirements, and such lists shall be based on a determination of reasonable initial and annual replacement needs of the employee. Section 6d of the regulation further provides that the prices on which agency cost estimates are based shall be reviewed annually, and the price lists adjusted as necessary to reflect changes.

Maritime Administrative Order 750-594, dated May 2, 1968, issued by the Acting Maritime Administrator pursuant to those provisions of law and statutory regulation, contains directives concerning industrial uniforms and uniform allowances for craft and custodial personnel at the United States Merchant Marine Academy. Section 6 of the administrative order provides that craft and custodial personnel who are foremen are authorized poplin shirts, and polyester trousers and jackets, as uniform articles; but that other craft and custodial employees are only authorized to have those uniform articles in a cotton twill material. Section 6 further provides that craft and custodial personnel who are foremen are authorized an initial uniform allowance of \$81, and a supplemental replacement allowance of \$47.60 in each subsequent year; but that other craft and custodial employees are only authorized an initial allowance of \$51.80, and an annual replacement allowance of \$26.60. Section 8 of the Administrative order states that these allowances are based upon lists of required uniform items and their estimated costs developed by the Superintendent of the Merchant Marine Academy; and it gives the Superintendent

the responsibility for annually reviewing the allowances and, if appropriate, recommending adjustments of those allowances to the Maritime Administrator.

Academy Memorandum 68-27, issued in 1968 by the Superintendent of the Merchant Marine Academy, shows that the following uniform allowance list was then established for all craft and custodial personnel, including both the foremen and other employees:

	<u>Initial Quantity</u>	<u>Annual Quantity</u>
Trousers	2	2
Shirts (long sleeve)	2	1
Shirts (short sleeve)	3	1
Jacket (with lining)	1	-
Cap (1 winter - 1 summer)	2	2
Emblems	5	-
Clip-on bow tie	1	-

Superintendent's Instruction 78-18, issued on October 27, 1978, by the Superintendent of the Merchant Marine Academy, states that the Assistant Secretary for Maritime Affairs "has granted an exception to the provisions of Maritime Administrative Order 750-594, to the extent that the quantity and types of uniform items and the uniform allowances for craft and custodial employees at the United States Merchant Marine Academy may be prescribed by the Superintendent." Superintendent's Instruction 78-18 replaces the 1968 uniform allowance list with the following list:

	<u>Initial Allowance</u>	<u>Annual Allowance</u>
Shirts	4	3
Trousers	3	3
Jacket	1	1/2*
Cap	1	1
Emblems	5	3-1/2

*Allowance for replacement of jacket over 2 years

Under Superintendent's Instruction 78-18 no distinction is made between foremen and other employees; both groups of craft and custodial personnel are authorized uniform articles made from polyester material, and both groups are authorized the same initial and annual replacement uniform allowances. The instruction states that the new initial uniform allowance is \$84.90, and the annual replacement allowance is \$68.20.

It is evident that the 1978 uniform allowance increases established by Superintendent's Instruction 78-18 were based on new policies of the Superintendent of the Merchant Marine Academy to upgrade the material quality of the employees' uniforms, equilibrate the employees' uniform allowance entitlements with those of their foremen, and increase the quantity of uniform articles to be replaced periodically by all the craft and custodial personnel at the Academy. In our view, while it may have been proper for the Superintendent of the Merchant Marine Academy to use the authority delegated to him in 1978 by the Maritime Administration to issue an administrative instruction establishing those new policies, it would not be proper to give those new policies a retroactive application over the preceding 10-year period. In that connection, it is well established that when administrative regulations or directives are properly issued, rights thereunder become fixed, and although the directives may be amended prospectively by administrative policy revisions to increase or decrease rights given thereby, they may not be amended retroactively except to correct obvious errors. See 32 Comp. Gen. 315 (1953); 32 *id.* 527 (1953); 33 *id.* 174 (1953); 40 *id.* 242 (1960); 44 *id.* 472 (1965); 46 *id.* 595 (1967); 47 *id.* 127 (1967); 53 *id.* 364 (1973); and 56 *id.* 1015 (1977). Hence, the provisions of Superintendent's Instruction 78-18 may not serve as a basis for determining the employees' uniform allowance entitlements for the years between 1968 and 1978, and the \$41.60 increase in the uniform replacement allowance received by the employees in 1978 may not be applied retroactively over the preceding 10 years.

B-195075

Instead, the uniform allowance entitlements of the 44 claimants for the years between 1968 and 1978 are for determination under the provisions of Maritime Administrative Order 750-594, which governed their entitlements during those years. As previously indicated, Maritime Administrative Order 750-594 granted the 44 employees a uniform replacement allowance of \$26.60 each year between 1968 and 1978. That allowance was intended to cover the purchase of 2 trousers, 2 shirts, and 2 caps in a cotton twill material. Although the amount of the allowance was not reviewed annually, there is no indication that the allowance was insufficient for its intended purpose, during the period in question.

Accordingly, the 44 claims are denied.

Deputy

R. G. Killin
Comptroller General
of the United States